

Hess Corp., 89 F. Supp. 3d 903, 907 (S.D. Tex. 2015) (citing *Meaux Surface Prot., Inc. v. Fogleman*, 607 F.3d 161, 167 (5th Cir. 2010)). Until the Court grants leave, the prior complaint is the operative complaint governing the action. *See U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003) (“The failure to obtain leave results in an amended complaint having no legal effect.”).

Here, the Estate’s Motion is premature because it has not received leave to file an amended complaint. Since the Court has not granted leave, the Estate’s prior complaint is operative. There are currently no claims seeking to apply Massachusetts law and no current conflict of law. The Estate’s request, therefore, is premature. Further, to the extent the Estate’s Motion depends on granting it leave to file an amended complaint, leave to amend should also be denied. In the request for leave to file an amended complaint, the Estate provided no explanation for delaying in bringing any Massachusetts claim, did not identify any newly discovered evidence, and failed to acknowledge how amendment at this stage in the litigation would significantly prejudice John Hancock and potentially delay resolution of this action. To support its assertion that the Estate should be denied leave to amend, John Hancock incorporates the arguments and authorities cited in its Response To Defendant The Estate Of Jennifer Lauren Wheatley’s Motion For Leave Of Court To Amend Its Answer, Crossclaim and Counterclaims [ECF 112]. The Estate’s Motion is premature because the Court has not granted it leave to file an amended complaint. The Court should not grant the Estate leave to file because of the significant prejudice and potential delay John Hancock will suffer as a result. The Motion, therefore, should be denied.

CONCLUSION

While John Hancock agrees that Texas law should apply to the Estate's breach of contract and negligence claims, it is premature to consider what choice of law should apply to the Estate's consumer protection claims. If the Estate receives leave from the Court to amend its Complaint, John Hancock does not contest the applicability of Massachusetts law. However, because the Estate has not (and should not) receive leave of Court to file an amended complaint, deciding the applicability of Massachusetts law to un-asserted claims is premature. The Estate's Motion, therefore, should be denied.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 13, 2020, the foregoing was served upon all counsel of record through CM/ECF.

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